



Senate

General Assembly

File No. 428

January Session, 2001

Substitute Senate Bill No. 1208

Senate, April 24, 2001

The Committee on Environment reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PUBLIC WATER COMPANY LANDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 25-32a of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 As used in sections 25-32, 25-33 and 25-34, "consumer" means any
4 private dwelling, hotel, motel, boardinghouse, apartment, store, office
5 building, institution, mechanical or manufacturing establishment or
6 other place of business or industry to which water is supplied by a
7 water company; "water company" means any individual, partnership,
8 association, corporation, municipality, The University of Connecticut
9 for the purpose of sections 22a-354c, 22a-357, 25-32b, 25-32d and 25-
10 37c, or other entity, or the lessee thereof, who or which owns,
11 maintains, operates, manages, controls or employs any pond, lake,
12 reservoir, well, stream or distributing plant or system that supplies
13 water to two or more consumers or to twenty-five or more persons on
14 a regular basis provided if any individual, partnership, association,

15 corporation, municipality or other entity or lessee owns or controls
16 eighty per cent of the equity value of more than one such system or
17 company, the number of consumers or persons supplied by all such
18 systems so controlled shall be considered as owned by one company
19 for the purposes of this definition.

20 Sec. 2. Section 25-37c of the general statutes is repealed and the
21 following is substituted in lieu thereof:

22 The Department of Public Health shall adopt, in accordance with
23 chapter 54, regulations establishing criteria and performance standards
24 for three classes of water-company-owned land.

25 [(a)] (1) Class I land includes all land owned by a water company or
26 acquired from a water company through foreclosure or other
27 involuntary transfer of ownership or control which is either: [(1)] (A)
28 Within two hundred and fifty feet of high water of a reservoir or one
29 hundred feet of all watercourses as defined in agency regulations
30 adopted pursuant to this section; [(2)] (B) within the areas along
31 watercourses which are covered by any of the critical components of a
32 stream belt; [(3)] (C) land with slopes fifteen per cent or greater
33 without significant interception by wetlands, swales and natural
34 depressions between the slopes and the watercourses; [(4)] (D) within
35 two hundred feet of groundwater wells; [(5)] (E) an identified direct
36 recharge area or outcrop of aquifer now in use or available for future
37 use, or [(6)] (F) an area with shallow depth to bedrock, twenty inches
38 or less, or poorly drained or very poorly drained soils as defined by
39 the United States Soil Conservation Service that are contiguous to land
40 described in [subdivision (3) or (4) of this subsection] subparagraph
41 (C) or (D) of this subdivision and that extend to the top of the slope
42 above the receiving watercourse.

43 [(b)] (2) Class II land includes (A) all land owned by a water
44 company or acquired from a water company through foreclosure or
45 other involuntary transfer of ownership or control which is either [(1)]

46 (i) on a public drinking supply watershed which is not included in
47 class I₂ or [(2)] (ii) completely off a public drinking supply watershed
48 and which is within one hundred and fifty feet of a distribution
49 reservoir or a first-order stream tributary to a distribution reservoir
50 and (B) notwithstanding any other provisions of the general statutes,
51 for lands owed by The University of Connecticut, (i) all level A aquifer
52 protection lands that are mapped, approved and regulated pursuant to
53 chapter 446i of the general statutes that are on a public drinking
54 supply watershed that is not a class I land, or (ii) all land that is
55 completely off public drinking supply watersheds and that is within
56 one hundred and fifty feet from a distribution reservoir or first-order
57 stream tributary to a distribution reservoir.

58 [(c)] (3) Class III land includes (A) all land owned by a water
59 company or acquired from a water company through foreclosure or
60 other involuntary transfer of ownership or control which is
61 unimproved land off public drinking supply watersheds and beyond
62 one hundred and fifty feet from a distribution reservoir or first-order
63 stream tributary to a distribution reservoir, and (B) notwithstanding
64 any provision of the general statutes, for lands owned by The
65 University of Connecticut, (i) unimproved land off public drinking
66 water supply watersheds and beyond one hundred and fifty feet from
67 a distribution reservoir or first-order stream tributary to a distribution
68 reservoir, and (ii) any land that is neither class I nor class II land.

69 Sec. 3. Subsection (b) of section 25-32 of the general statutes is
70 repealed and the following is substituted in lieu thereof:

71 (b) No water company shall sell, lease, assign or otherwise dispose
72 of or change the use of any watershed lands, except as provided in
73 section 25-43c, without a written permit from the Commissioner of
74 Public Health. The commissioner shall not grant a permit for the sale,
75 lease or assignment of class I land, except as provided in subsection (d)
76 of this section, and shall not grant a permit for a change in use of class

77 I land unless the applicant demonstrates that such change will not
78 have a significant adverse impact upon the present and future purity
79 and adequacy of the public drinking water supply and is consistent
80 with any water supply plan filed and approved pursuant to section
81 25-32d. The commissioner may reclassify class I land only upon
82 determination that such land no longer meets the criteria established
83 by [subsection (a)] subdivision (1) of section 25-37c, as amended by
84 this act, because of abandonment of a water supply source or a
85 physical change in the watershed boundary. Not more than fifteen
86 days before filing an application for a permit under this section, the
87 applicant shall provide notice of such intent, by certified mail, return
88 receipt requested, to the chief executive officer and the chief elected
89 official of each municipality in which the land is situated.

Statement of Legislative Commissioners:

The subsection and subdivision indicators were changed for consistency with the general statutes and accordingly, section 3 was added.

ENV *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: University of Connecticut

Municipal Impact: None

Explanation**State and Municipal Impact:**

Provisions in the bill will not materially alter the fiscal or programmatic operations of the University of Connecticut. Therefore there is no fiscal impact associated with the bill.

OLR Bill Analysis

sSB 1208

AN ACT CONCERNING PUBLIC WATER COMPANY LANDS.**SUMMARY:**

This bill subjects the University of Connecticut, with regard to some of the land it owns, to the laws that restrict changes in land use, sale, lease, or transfer. It subjects UConn to some of the other laws that apply to water companies in the areas of well field mapping, water supply emergencies, and water supply planning.

EFFECTIVE DATE: October 1, 2001

TREATMENT OF UCONN LAND

By law, land owned by a water company that serves two or more premises or more than 25 individuals is in one of three classes. A Department of Public Health (DPH) permit is needed to sell, lease, or otherwise dispose of class I or class II land. A permit is also required, with minor exceptions, to change the use of such land. This land is either on a watershed or within 150 feet of a reservoir or its primary tributaries. Although the term water company applies to many private and public entities, the attorney general has held that it does not cover state agencies (see BACKGROUND) and thus they are not subject to these restrictions on land transactions.

The bill expands the term water company to include UConn for specific purposes, notably the restrictions on land transactions.

The bill categorizes land owned by UConn that meets one of two criteria as Class II land. The first, which applies by law to land owned by water companies, is land that is off the watershed but within 150 feet of a reservoir or its primary tributaries. The second is watershed that is mapped as an aquifer protection area under existing law but is not class I land (land that is close to water supply sources, steeply

sloped, or meets other statutory criteria). The bill categorizes UConn land as class III land if it is (1) unimproved and located off a watershed and more than 150 feet from a reservoir or its primary tributaries (the current definition for class III water company land) or (2) not otherwise classified as class I or class II land. It appears that, under the bill, none of UConn's land is categorized as class I land, which is subject to the most restrictive provisions under current law.

By extending the definition of class II land to include some of UConn's land, the bill subjects the sale, lease, transfer, or change of use of such lands to the laws that currently apply to water companies. By law, the DPH commissioner can subject a permit for the sale, transfer, or change of such of such land to conditions or restrictions he considers necessary to protect the purity and adequacy of the water supply. The law specifies the factors he must consider in issuing a permit. In addition, he can only grant the permit if he determines that (1) the transaction will not significantly harm water supply and (2) any conditions he imposes on it can be enforced. If he believes that a transaction may significantly harm water supply, he may engage consultants to review the application, at the applicant's expense.

The commissioner can issue a permit for selling, leasing, or transferring class II land only as part of transactions that also involve class III land and impose restrictions on the use of class II land that will prevent its development. Class II land can only be sold, leased, or transferred to a municipality, water company, or conservation organization if a permanent easement is granted to keep the land in its natural condition while allowing for the protection of water supply and appropriate recreation.

OTHER APPLICABLE WATER UTILITY LAWS

The bill subjects UCONN to the law that requires water utilities to map their well fields. By law, utilities that serve 1,000 or more people must map the areas that contribute to and recharge wells in stratified drift aquifers. Additional requirements apply to utilities serving more than 10,000 people.

The bill subjects UConn to the law governing water supply emergencies. By law, the DPH commissioner, in consultation with the

Department of Environmental Protection (DEP) commissioner and the Department of Public Utility Control commissioners, can declare such an emergency. The DPH commissioner can order water companies, including UConn under the bill, to connect their water mains temporarily to permit the sale or transfer of water. By law, violation of these orders is subject to a civil fine of up to \$5,000 per day, with each day considered a separate violation.

The bill requires UConn to submit a water supply plan to DPH for its approval with DEP's concurrence. The plan must evaluate the water supply needs in the area UConn serves and is subject to DPH regulations. If a utility (including UConn under the bill) submits a plan that involves the forecast of or actual land sales, abandonment of a supply source, or reclassification of its land, it must notify the local municipality and various land conservation organizations.

BACKGROUND

Attorney General's Opinion

In response to a UCONN request, the attorney general held on November 29, 2000, that the statutes do not apply to state agencies unless they are specifically included in them. He based this opinion on several state Supreme Court cases. He held that while some statutes, notably those regulating drinking water quality, refer and apply to state agencies, UConn and other agencies are not subject to the laws restricting land transactions.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 28 Nay 0